

### **DETAILED ACTION**

Applicant's arguments filed 5/18/11 have been fully considered but they are not persuasive. See argument below. Previous rejections and other issues not addressed below are withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,7,11,13,15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anon (RD 451014; 11/10/01) and Baltruschat et al. (USPN 6683027; 1/27/04). Anon suggests a co-herbicide composition comprising picolinafen plus tritosulfuron. The composition was applied in common liquid and solid formulations. Anon does not exemplify an invention comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30). Anon also does not teach the composition comprising the safener cloquintocet. However, Baltruschat et al. suggest herbicide compositions comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30) plus cloquintocet (column 12 lines 5-6). Baltruschat et al. teach a method of applying the composition to crop to control weeds (abstract, claims). Like Anon, Baltruschat et al. do not exemplify an invention comprising picolinafen plus tritosulfuron plus cloquintocet. However, it would have been obvious for one of ordinary skill in the art to arrive at such an invention. One would have been motivated to this since Baltruschat et al. suggest the combination of ingredients. With respect to the instant amounts and ratios

compounds, an artisan in the field would have been expected to determine the optimum amounts and ratios of each compound. One would have been motivated to do this in order to make a herbicide composition that would have been effective at controlling weeds without destroying the crop. While Applicants' claims are drawn to synergism, Applicants provide no data in the Specification to support synergism.

***Response to Applicants' argument***

Applicants point to results in the tables to support their claim to synergy for the elected combination of picolinafen plus tritosulfuron, particularly Table 1 contains data for the combination of picolinafen plus tritosulfuron. The Examiner argues that the data are not convincing since some results obtained using the elected composition are not synergistic (see data for TRZAW). The data are mixed some reading synergistic and others not. No clear trend of synergy has been established for elected combination of picolinafen plus tritosulfuron. Applicants argue that TRZAW is a crop plant not a weed. However, the Examiner argues that Table 1 list TRZAW as a weed not a crop. The Examiner reiterates that the results in the Table are mixed. Thus, the showing is commensurate in scope with the claims. An active does not have to be eliminated from Baltruschat et al. in order for Baltruschat et al. to make the instant invention obvious. Note, Baltruschat et al. suggest the combination picolinafen plus tritosulfuron with a required compound (i.e. 2-Phenyl-4-(hetero-)aryloxy pyrimidine herbicide) in Baltruschat et al. Thus, the instant claims employ "comprising language" which allows for the inclusion of required component of Baltruschat et al. with the instantly claimed invention of a composition comprising picolinafen plus tritosulfuron. For the above reason, the rejection is maintained.

***Election Status***

Elected invention comprising picolinafen plus tritosulfuron is not allowable. The Examiner will rejoin claims according to the rules/standards set forth in the MPEP. If Applicants' claims meet the rejoinder rules in the MPEP, the claims will be rejoined.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Alton N. Pryor/  
Primary Examiner, Art Unit 1616

